United Nations CED/C/ALB/Q/1

International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

List of issues in relation to the report submitted by Albania under article 29 (1) of the Convention*

I. General information

1. Please provide information about the report preparation process, in particular whether it benefited from broad-based meaningful consultations, including with the families of victims' through their organizations, human rights defenders working on the issue of enforced disappearance and non-governmental organizations (NGOs). In relation to paragraph 6 of the State party's report (CED/C/ALB/1), please clarify the actual involvement and contribution of civil society organizations in the preparation of the report.

2. In relation to paragraph 28 of the State party's report, please indicate the internal mechanisms in place to ensure the direct applicability of the Convention, including the provisions of the Convention that are not automatically self-executable. In relation to paragraph 124, please provide examples of case law, if any, in which the provisions of the Convention have been invoked before or applied by courts or other relevant authorities since the accession of the State party to the Convention. What measures have been taken by the State party to ensure the full applicability of the provisions of the Convention in its domestic legal order?

II. Definition and criminalization of enforced disappearance (arts. 1-7)

3. In relation to paragraph 45 (a) and (b) of the State party's report, please provide information on the legal and administrative measures that guarantee the non-derogability of the prohibition of enforced disappearance so as to ensure that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as justification for enforced disappearance. Please provide information on the limits prescribed by the Constitution within which guaranteed human rights and freedoms can be restricted, under which specific circumstances and for how long. Please provide details of any legislation or practices concerning terrorism, emergency situations, national security or other grounds that the State party may have adopted that would have an impact on the effective implementation of this prohibition (arts. 1 and 16).

4. In relation to paragraphs 46, 52 and 57 of the State party's report, please provide additional clarification on the definition of enforced disappearance as a crime against humanity, in conformity with applicable international law, that is, when enforced

* Adopted by the Committee at its thirteenth session (4-15 September 2017).

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disappearance is committed as part of a widespread or systematic attack against a civilian population (art. 5).

5. Please provide information on how the State prohibits and prosecutes the conduct defined in article 3 of the Convention when it is committed by persons or groups acting without the authorization, support or acquiescence of the State. In particular, in relation to paragraphs 53, 54 and 55 of the State party's report, please provide information on how "offences which contain elements of enforced disappearance, such as kidnapping or holding a person hostage and illegal deprivation of liberty" (para. 53) prescribe the prohibition and prosecution of conduct carried out by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State. Please provide examples of case law, if any, as well as of any measures taken to investigate acts of enforced disappearance committed by persons or groups of persons acting without the authorization, support or acquiescence of the State, including prosecutions carried out, sentences handed down and any reparation measures provided to victims (art. 3).

6. In relation to paragraphs 37 and 56 of the State party's report, which indicate that no cases of enforced disappearance have been investigated or prosecuted in Albania, please provide information on complaints of enforced disappearance, if any, that have been lodged with the Court of First Instance for Serious Crimes, the results of the investigations and remedies provided. In case of absence of complaints, please provide information on the measures taken to analyse the reasons for such absence and an assessment on whether the situation requires specific measures, including facilitating the lodging of complaints and measures to prevent and combat acts of enforced disappearances. In relation to paragraphs 13 and 56 of the State party's report, with regard to individual criminal responsibility for enforced disappearance as a crime against humanity, please provide examples, if any, of relevant case law, the number of investigations and prosecutions carried out by the Public Prosecution Office and the Judicial Police, sentences handed down and any reparation measures provided to victims (arts. 4, 5 and 24).

7. In relation to paragraph 60 of the State party's report, please provide information about the applicable law governing the types of conduct described in article 6 (1) (a) of the Convention, when enforced disappearances do not constitute a crime against humanity, including ordering, soliciting, inducing the commission of, attempting to commit, being an accomplice to or participating in an enforced disappearance, or any other types of conduct which by virtue of their nature are similar to the aforementioned. Please indicate whether a subordinate can lawfully oppose an order to commit acts of enforced disappearance and describe the legal recourse available to the subordinate against any disciplinary measures resulting from his or her refusal to carry out a criminal act ordered by a superior. Please provide information on such cases that may have occurred and whether there is jurisprudence with regard to the prohibition of invoking orders from superiors, including orders from military authorities, as a justification of enforced disappearance. If such jurisprudence exists, please provide information on their practical implementation, including cases of disciplinary proceedings. In relation to paragraphs 63 and 64 of the State party report, please provide information on whether the position of public authorities with respect to the notion of "due obedience" as a criminal law defence has any impact on the effective implementation of such prohibition (art. 6).

III. Judicial procedure and cooperation in criminal matters (arts. 8-15)

8. In relation to paragraphs 71 and 72 of the State party's report, please provide further clarification on whether the commencement of the enforced disappearance is not taken as a reference to apply the statute of limitations. Please indicate whether, during the time limit indicated in the national legislation, the State guarantees that no statute of limitations applies for criminal, civil or administrative actions brought by victims seeking the right to an effective remedy. Please include concrete examples, if any. Please also provide information on when article 109 (c) of the Criminal Code could be applied in cases of enforced disappearance that occurred before the entry into force of this legal provision, but for which the fate or whereabouts of the victim is still unknown at the present time (art. 8).

9. In relation to paragraph 74 of the State party's report, please indicate whether measures have been taken to establish jurisdiction in cases contemplated under article 9 (1) (a), (b) and (c) of the Convention and provide examples of cases where article 9 (1) (b) and (c) have been applied. Please indicate the measures taken to establish jurisdiction in cases where the alleged offender is present in the territory of the reporting State and the State is not extraditing him or her. Please also provide examples of cases where (a) extradition was granted; and (b) extradition was denied. Please provide information on cases involving the offence of enforced disappearance, in which mutual assistance was requested by or from the reporting State, including the result of the request (art. 9).

10. In relation to paragraph 31 and 32 of the State party's report, please specify whether, pursuant to domestic law, military authorities would be competent to investigate and prosecute persons accused of enforced disappearance and, if so, whether there are any procedural mechanisms in place to exclude civil or military law enforcement or security forces from the investigation into an enforced disappearance when one or more of their officers have been accused of committing or of having been involved in the commission of the offence. Please clarify which jurisdiction has the competence to trial the crime of enforced disappearance when committed by the military (art. 12).

11. Please provide information on the existence of legal or other measures to immediately carry out a preliminary inquiry or investigation to establish the facts in accordance with article 10 (2) of the Convention. In relation to paragraph 125 of the State party's report, please clarify the extent to which reciprocity is requested in the provision of international legal assistance in cases of enforced disappearance that does not constitute a crime against humanity. Please also indicate whether any limitations or conditions set out in national legislation could be applied in relation to requests for judicial assistance or cooperation in the terms set out in articles 14 and 15 of the Convention. Please also provide information on the steps taken to cooperate with neighbouring countries which have initiated their own investigation (arts. 10, 13, 14 and 15).

12. Please indicate whether the staff of the Public Prosecution Office and the Judicial Police in charge of investigation and prosecution of cases of alleged enforced disappearance are specifically trained to initiate investigations into cases of alleged enforced disappearance. In that respect, please also indicate whether the above-mentioned authorities or any other authorities responsible for investigating cases of alleged enforced disappearance: (a) have the necessary powers and resources to conduct investigations into the offence of enforced disappearance independently of the agent who committed it; (b) are subject to any limitations which may restrict their access to places of detention where there are ground to believe that a disappeared person may be present (arts. 12 and 18).

13. With reference to paragraph 109 of the State party's report, please indicate whether domestic law provides for the suspension from their duties of State officials suspected of having committed or of having been involved in the commission of an enforced disappearance, during the investigation. In relation to paragraph 119 of the State party's report, please indicate whether, in addition to the protection of witnesses and a person close to them, mechanisms are in place for the protection of complainants, relatives of the disappeared person, their representatives and other persons participating in the investigation of an enforced disappearance, or any person with a legitimate interest requesting information in terms of article 18 (1) of the Convention about any kind of ill-treatment, intimidation or sanction. In relation to paragraph 113 of the State party's report, please indicate whether the competent authorities investigate cases of enforced disappearance ex officio, that is, even in the absence of a formal complaint. What remedies are available to the complainant in case the competent authorities refuse to investigate his or her case (arts. 12 and 18)?

IV. Measures to prevent enforced disappearances (arts. 16-23)

14. In relation to paragraph 41 of the State party's report, please provide information on the progress made towards creating the Disappeared Persons Section within the Institute for Integration of Former Politically Persecuted, including any immediate steps taken so far

with regard to data and evidence management systems, including granting access to classified information currently in the custody of the State Intelligence Services; protection and preservation of identified sites, sample collections, as well as DNA testing and matching. Please indicate whether sufficient human and financial resources have been envisaged for the Institute to fulfil its mandate, including to carry out all exhumations and identification of mortal remains that fall under its jurisdiction and whether additional forensic pathologists have been appointed. In relation to paragraph 143 of the State party's report, please provide updated information on the status of the envisaged agreement of collaboration with the International Commission on Missing Persons (ICMP), and the necessary measures taken to launch this initiative as soon as possible, with the aim of supporting the search for persons believed to have gone missing during the communist regime. Please also provide information on the progress made in establishing an authority to shed light on the Sigurimi files, relating to the Communist-era secret police, and the steps taken to preserve all existing records and documentation and attain justice for victims and their families (arts. 19 and 24).

15. In relation to paragraphs 126 (c), 130 (b) and 137 of the State party's report, which describe grounds under which extradition may not be granted, please indicate whether the Criminal Code and Law No. 10193 of 3.12.2009 on jurisdictional relations with foreign authorities in criminal matters provide for the prohibition of expulsion, return, surrender or extradition of a person to a State where there are substantial grounds for believing that he or she might be subject to enforced disappearance or to other forms of serious harm to life and personal integrity. Furthermore, in relation to Law No. 121/2014 on asylum, which defines non-refoulement as the obligation to prohibit expulsion or refoulement of a foreigner or stateless person (see CED/C/ALB/1, para. 147), please indicate whether the law explicitly mentions the risk of being subjected to enforced disappearance as grounds for non-refoulement. Please provide information on:

(a) The mechanisms and criteria applied in the framework of expulsion, return, surrender or extradition procedures to evaluate and verify whether a person may at risk of being subjected to enforced disappearance;

(b) Whether it is possible to appeal a decision on expulsion, return, surrender or extradition and, if so, please indicate before which authorities, the applicable procedures and whether they have suspensive effect;

(c) Whether legislation and practices concerning terrorism, emergency situations, national security or other grounds that may have been adopted have had any impact on the effective implementation of the prohibition to expel, return, surrender or extradite a person.

16. In relation to paragraph 146 of the State party's report, please provide information on the procedural safeguards concerning decisions to detain foreigners in "closed centres" and indicate in particular if a maximum length of administrative detention has been introduced. Please provide information on the availability of legal aid and on remedies to appeal detention decisions. Please indicate whether individuals whose citizenship has been revoked and who are consequently detained in the deportation centre enjoy the same fundamental safeguards as others and can effectively challenge the decisions to detain and deport them. Please provide information on the kind of training received by officers dealing with the expulsion, return or extradition of foreigners (arts. 16 and 23).

17. In relation to paragraphs 55 and 148 of the State party's report, please explain the difference between unlawful deprivation of liberty, which is a criminal offence in domestic legislation and punishable by fine or imprisonment for up to one year, and the statement in paragraph 148 of the State party's report that Albanian legislation does not contain any provision with regard to secret detention or unofficial detention. Please provide information on the existence of protocols to guarantee prompt notification and access to a lawyer, medical personnel and family members, in practice and not only in law, from the outset of the deprivation of liberty up to the moment of release. Please also provide information on whether any conditions and/or restrictions apply to the measures provided for in article 17 (2) (d) of the Convention. In relation to paragraphs 162, 164 and 166 of the State party's report, please indicate the number of cases brought before a court to determine the

lawfulness of a person's detention, as provided for in article 17 (2) (f) of the Convention, and the number of acquittals and remedies provided (arts. 17 and 21).

18. In relation to paragraph 169 of the State party's report, please provide information on the measures taken to ensure that all records of persons deprived of their liberty are properly and immediately compiled and kept up to date. In addition, please indicate whether there have been any complaints concerning the failure by officials to record a deprivation of liberty and, if so, please provide information about the proceedings initiated and, if relevant, the sanctions imposed. Please also provide information on the measures taken to ensure that such omissions are not repeated in the future, including the provision of training for the personnel in question. Please indicate if any steps have been taken to create registers, which include all the elements contained in article 17 (3) of the Convention (arts 17, 22 and 23).

19. In relation to paragraphs 178, 180, 185, 187 of the State party's report, please provide information on any domestic law that provides for restriction of access to information about persons deprived of their liberty, and the nature and duration of such restrictions. Please also provide information on the means of appeal against a refusal to disclose information about persons deprived of their liberty and on existing guarantees for a prompt and effective judicial remedy to obtain information without delay. Furthermore, please provide information on existing legislation to ensure protection from any ill-treatment, intimidation or sanction of persons who request access to information and those involved in the investigation of an enforced disappearance and the existence of mechanisms to that effect (arts. 18 and 20).

20. Please provide information about legislative or other measures taken to prevent and/or impose sanctions on failure to guarantee that any person deprived of his or her liberty or any other person with a legitimate interest is entitled to take proceedings before a court to determine: (a) the lawfulness of the deprivation of liberty; (b) failure to record the deprivation of liberty of a person; and (c) refusal to provide information on the deprivation of liberty or the provision of inaccurate information, even though the legal requirements for providing such information have been met. Please provide further information on the mechanisms in place to prevent the unlawful deprivation of liberty, the failure to record the deprivation of liberty and the refusal to provide information on the deprivation of liberty or the provision of inaccurate information: what criminal, administrative and disciplinary sanctions are foreseen for the aforementioned conduct (art. 22).

21. Please indicate whether the State party provides specific training on the Convention, as provided for in article 23 thereof, to civil and military law enforcement personnel, medical personnel, public servants and any other persons who may be involved in the custody or treatment of persons deprived of their liberty, in particular the police, the judiciary and authorities dealing with migrants. In that respect, please provide information on what measures are being taken to raise awareness of the Convention among judges, lawyers and prosecutors to ensure that its provisions are taken into account before and by national courts (art. 23).

V. Measures to provide reparation and to protect children against enforced disappearance (arts. 24-25)

22. With reference to paragraph 194 of the State party's report, please explain how the notion of "injured party" in domestic law would satisfy the wider definition of victim as any individual who has suffered harm as the direct result of an enforced disappearance, in line with article 24 (1) of the Convention. Please indicate whether the State party envisages incorporating into domestic law a definition of victim that is in accordance with the provision in the Convention. Please provide information on the steps taken to ensure the right of victims of enforced disappearance to know the truth and participate in the proceedings, in accordance with article 24 (2) of the Convention (art. 24).

23. In relation to paragraph 195 of the State party's report, please provide detailed information on the relevant procedures and time frame in place for seeking and obtaining compensation, including who would be responsible for providing it. Please also indicate

whether, besides compensation, domestic law provides for other forms of reparation for persons who have suffered harm as a direct result of an enforced disappearance, including restitution, rehabilitation, satisfaction and guarantees of non-repetition, in line with article 24 (5) of the Convention. Please clarify whether there is a time limit for submitting a claim for reparation, and indicate whether the law addresses the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in areas such as social welfare, financial matters, family law and property rights, including a procedure to obtain a declaration of absence by reason of enforced disappearance, so that victims do not have to declare the disappeared person dead or presumed dead. Please also indicate if the provision of social allowances is conditional on obtaining a declaration of death of victims of enforced disappearance (art. 24).

24. In relation to paragraph 203 of the State party's report, please provide information on the relevant measures taken to search for and identify child victims of enforced disappearance, including through a DNA database, as per the procedures in place to return them to their families of origin. Please indicate what procedures are in place to guarantee the right of disappeared children to have their true identity re-established. Please provide information on the procedures in place to review and, if necessary, annul any adoption or placement of children that originated in an enforced disappearance, including conditions for an adoption to be valid. Please also provide information on whether there is a specific time frame for an adoption to be reviewed and/or annulled, and on the persons entitled to initiate a procedure of this nature. If such procedures have not yet been set up, please indicate whether there are any initiatives to bring national legislation into line with articles 25 (4) of the Convention (art. 25).